

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7718 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARISH JAYANTILAL RATHODRA

Versus

STATE OF GUJARAT

Appearance:

MISS MITA S PANCHAL for MR BK OZA for Petitioner
MR SP DAVE AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 25/11/97

ORAL JUDGEMENT

1. The petitioner, at present under detention pursuant to the detention order dated 26.3.1997, passed by the Police Commissioner, City of Ahmedabad invoking the powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act 1985, (hereinafter referred to as "the Act") calls in question the legality and validity of the detention order.

2. Against the petitioner, about three complaints came to be lodged. The first complaint was lodged with the Vejalpur Police Station in connection with the offence punishable under sec. 380 of IPC. The another complaint for the likewise offence came to be lodged in the Ellisbridge Police Station and, third complaint with the Ellisbridge Police Station came to be lodged alleging that the petitioner committed the offence punishable under section 454 and 380 of IPC. In all the three complaints, burglary has been alleged. During the course of the investigation, it was found that the detailed inquiry against the petitioner was necessary. The Police Commissioner of the City of Ahmedabad then made the detailed inquiry and after inquisition, he found that the petitioner was chaotic hound, and yahoo; and his activities were against the interest of the society and public order. It is also found that his criminal activities were insurmountable and were going berserk. The people were apprehending any wrong at any time and, because of the impending danger to their lives, they were unwillingly come forward to make the statements or lodge the complaint. It was because the people had cultivated the feelings of insecurity thinking that if at all they prefer to revolt against the petitioner and did not bend his way, it would amount to inviting the danger or death warrant. The statements of some persons, who showed their willingness on the assurance of the protection, were recorded. The Police Commissioner was then satisfied that the petitioner who was a dangerous person was resorting to different anti social activities and coercive measures was harassing the people. When opinion formed was growing stronger, to check horrible activities, the Police Commissioner could also see that the General Law applicable was falling short to the requirements and the only way out was to pass the order of detention. He, therefore, passed the order of detention, and pursuant to that order, at present the petitioner is under detention. He has challenged the legality and validity of the detention order by preferring this application.

3. The order is assailed on several grounds, but it would not be necessary for me to dwell upon all those grounds and decide the application, because only on one ground this application can well be disposed of. I will, therefore, confine to the only one ground on which the application can be disposed of, to which the learned advocates appearing on behalf of the parties have agreed.

4. As per section 2(4) of the Act a person can be branded as a 'dangerous person' if he is acting in any

manner prejudicial to the maintenance of public order. It is, therefore, necessary to determine whether the activities of such person will fall within the ambit of expression of public order. A distinction has to be drawn between the 'law and order' and maintenance of public order because most often two expressions are confused, and detention orders are passed by the authority concerned in respect of the activities of the person which exclusively fall within the domain of 'law and order' and which has nothing to do with the 'maintenance of public order.' Hence, if the activities which are found to be illegal but which would fall within the domain of law and order, the order of detention if passed on the basis of those facts cannot be maintained because in that case, it would be the matter of law and order and not the matter of maintenance of public order; and consequently, the order passed will have to be quashed. For my such view, a reference of a decision in the case of Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police & Ors., reported in 36(2) [1995(2)] GLR p. 1268, may be made.

5. Even if in this case, it is assumed that the petitioner is a 'dangerous person' within the meaning of section 2(c) of the Act, the order passed cannot be maintained because it is not shown that the criminal activities noted by the authority passing the order of detention are prejudicial to the maintenance of public order. What transpires reading the order in question is that the petitioner is alleged to have committed the aforesaid three offences of theft, and on the basis of those three offences and few statements of the witnesses, it seems the Commissioner of Police reached the conclusion that such activities were prejudicial to the maintenance of public order. In my view, the complaints lodged for the alleged offences will fall within the ambit of 'law and order' and not the 'maintenance of public order' because for those offences, the petitioner can well be effectively dealt with under the general laws. when that is the case, the order passed in view of the aforesaid decision, cannot be maintained.

6. For the aforesaid reasons, the order being illegal, is hereby quashed and, the petitioner is ordered to be set at liberty forthwith, if no longer required in any other case. Rule made absolute.
